



## Office of the Attorney General

State of Texas

December 12, 1996

DAN MORALES  
ATTORNEY GENERAL

Ms. K.H. Schneider  
County Attorney  
Bandera County  
P.O. Box 1435  
Bandera, Texas 78003

OR96-2379

Dear Ms. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 102279 and ID# 102580.

In connection with ID# 102279, the requestor submitted four requests for information, one to the Bandera County Attorney (the "county attorney"), one to a justice of the peace, one to the Bandera County/District Clerk (the "clerk"), and one to both the clerk and a Bandera County judge. You state that the county attorney does not collect, assemble or maintain the requested information and that she possesses none of the information. The county attorney also states that she is not required to do legal research to answer the requests. Further, the county attorney states that some of the requests are unclear. As to the request to the justice of the peace, you claim that the justice of the peace is a member of the judiciary and therefore not subject to the provisions of chapter 552. The clerk states that she does not have possession of the requested records with the exception of minutes of the grand jury, which she has offered the requestor for inspection and copying. She also claims that she is not required to do legal research to respond to the request and that she is unclear as to the information sought in several of the specific requests. Regarding the final request, the county judge claims that he is part of the judiciary and therefore not subject to the provisions of chapter 552. The clerk claims that she does not have most of the information and that the other information is part of certain court files which are available to the requestor for inspection and copying.<sup>1</sup>

The request at issue in ID# 102580 is directed to the clerk, and the county states that, as to four of the categories of information on which the county seeks a ruling,

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<sup>1</sup>The requestor has also requested certain information regarding his ballot status for the position of Bandera County Judge. We understand that the clerk has released certain information to the requestor in response to this request.

specifically, numbers 12, 13, 14, and 15, the clerk has no information in her possession and that she is not required to prepare answers to questions or do legal research to respond to these requests.

We first address the requests directed to the clerk, the justice of the peace, and the county judge. Chapter 552 does not apply to records of the judiciary. *See* Gov't Code § 552.003(1)(B). Chapter 552 neither authorizes information held by the judiciary to be withheld nor requires it to be disclosed. Open Records Decision No. 25 (1974). The justice of the peace and the county judge are clearly members of the judiciary. The records requested from the clerk, to the extent they exist, are held by the clerk as an agent of the court. Therefore, these records are in the constructive possession of the judiciary. Thus, the information requested from the justice of the peace, the county judge, and the clerk is not subject to public disclosure under chapter 552 of the Government Code.<sup>2</sup>

We now address the request directed to the county attorney. Chapter 552 of the Government Code requires an "officer for public information" of a governmental body to promptly produce public information. Gov't Code §§ 552.203, 552.221. Chapter 552 generally does not require a governmental body to obtain information not in its possession from another entity or to obtain new information in order to comply with an open records request. *See* Open Records Decision Nos. 561 (1990), 558 (1990), 534 (1989). This is so with regard to county records in particular.

With regard to county records, Government Code section 552.201(b) reads as follows:

Each elected county officer is the officer for public information and the custodian, as defined by Section 201.003, Local Government Code, of the information created or received by that county officer's office.

Local Government Code section 201.003(2) defines "custodian" as:

the appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.

We do not believe that the custodian for public information of one county entity serves as the custodian for public information held by any other county entity; a custodian's duty under the act to disclose public information applies only to information maintained by that

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<sup>2</sup>We note, however, that Texas courts have recognized a common-law right of the public to copy and inspect records of the judiciary. *See Davenport v. Garcia*, 834 S.W.2d 4, 24 (Tex. 1992); Attorney General Opinion DM-166 (1992) (historical perspective of right of public access to records of the judiciary); Open Records Decision No. 618 (1993). Also, records held by county clerks are open to public inspection pursuant to other statutory law. Local Gov't Code § 191.006.

custodian's office.<sup>3</sup> Furthermore, a governmental body's duty to obtain requested information from another entity only arises if that entity holds the information on behalf of that governmental body. See Open Records Decision No. 534 (1989) at 2. Thus, chapter 552 does not require the county attorney to respond to requests for information that she does not have in her possession.

We note that chapter 552 of the Government Code does not require a governmental body to answer factual questions, Open Records Decision Nos. 555 (1990), 379 (1983), 347 (1982), or to perform legal research, Open Records Decision No. 563 (1990). However, a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990). Therefore, generally, if a governmental body has information from which the questions posed can be answered, the governmental body must produce that information unless it is subject to some exception to disclosure. Here, the county attorney indicates that she does not have the requested information in her possession. Therefore, the county attorney need not respond to the request for information.

To the extent that the requests are unclear, numerous opinions of this office have addressed situations in which a governmental body has received a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In response to these requests, the county attorney must make a good-faith effort to relate the request to information in her possession and must help the requestor to clarify his request by advising him of the types of information available. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the

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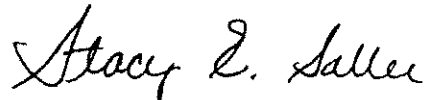
<sup>3</sup>While we do not believe that a county public officer's duty extends to the production of information held by another county entity, this duty may exist if a requestor fails to correctly identify the "officer for public records" of a governmental body. The act requires a governmental body to respond to a request directed to any agent of the governmental body. See Open Records Decision No. 497 (1988) at 3; see also Local Gov't Code § 201.003(7) (defining "governing body" for purposes of Local Government Records Act, Local Gov't Code § 201.001, *et seq.*).

request. Gov't Code § 552.222(b)); *see also* Open Records Decision No. 561 (1990) at 8.

You next ask whether the clerk has an obligation to determine to which, if any, appropriate agency to direct the request, and does she have the obligation to deliver the request on behalf of the requestor. We believe that the clerk does not have an obligation to determine which agency holds the requested information or to deliver the request to that agency on behalf of the requestor. The clerk may do so but is not required by the provisions of chapter 552 of the Government Code to do so.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 102279  
ID# 102580

cc: Mr. Lonny Devoe, Hall  
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